

No. 21-1740

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DANIEL FELIX,)	
)	
Plaintiff-Appellant,)	<u>From the Eastern District</u>
)	<u>of North Carolina at Raleigh</u>
v.)	
)	No. 2:21-CV-7-FL
SHERIFF DOUG DOUGHTIE et al.)	
)	
Defendants-Appellees.)	

**RESPONSE TO PLAINTIFFS-APPELLANTS' INFORMAL BRIEF
BY DEFENDANTS-APPELLEES SHERIFF DOUG DOUGHTIE,
DEPUTY DONOVAN RUTH, DARE COUNTY, DARE COUNTY BOARD
OF COMMISSIONERS, COMMISSIONERS ROBERT WOODARD,
WALLY OVERMAN, ROB ROSS STEVE HOUSE, JIM TOBIN, ERVIN
BATEMAN AND DANNY COUCH, AND DARE COUNTY ATTORNEY
ROBERT OUTTEN**

NOW COME Defendants-Appellees Dare County Sheriff Doug Doughtie, Deputy Donovan Ruth, Dare County, Dare County Board of Commissioners (hereinafter "BOC"), BOC Chairman Robert Woodard, BOC Vice Chairman Wally Overman, BOC Commissioner Rob Ross, BOC Commissioner Steve House, BOC Commissioner Jim Tobin, BOC Commissioner Ervin Bateman, BOC Commissioner Danny Couch, and Dare County Attorney Robert Outten (hereinafter collectively the

“Dare County Defendants”) by and through undersigned counsel, and, pursuant to Local Rule 34(b) and this Court’s briefing order, respond to the *pro se* Plaintiffs-Appellants’ Informal Brief as follows:

As background, Plaintiff Daniel Felix comes before this Court attempting to appeal claims that are virtually identical in both form and substance to his appeal in Felix, Daniel v. Dare County Sheriff’s Department et al., E.D.N.C. Case No. 2:19-cv-00030-BR, Fourth Circuit Appeal No. 20-1471 (hereinafter “Felix I”), which was already dismissed with prejudice for failure to state a claim against the Dare County Sheriff’s Department, Sheriff Doug Doughtie, and Deputy Donovan Ruth, and whose dismissal was affirmed as to those Defendants on January 21, 2021. See Felix I, 4th Circuit’s Order, Doc. 15 (attached as **Exhibit A**). Plaintiffs responded to the dismissal with prejudice in Felix I by adding various additional Dare County Commissioners to the action and re-filing a virtually identical lawsuit.

Plaintiffs’ dual lawsuits are primarily about undomesticated cats, along with other animals in Dare County, which Plaintiffs claim were either harmed or killed by various non-parties during a ten-year period. (See Amend. Compl. *passim*. (Dist. Ct. Doc. No. 30).) All of the *pro se* Plaintiffs’ claims arise out of an implausibly-alleged “conspiracy” against the Plaintiffs, an alleged failure of the Dare County Defendants to adequately investigate “crimes” committed against Plaintiffs and various animals in Plaintiffs’ neighborhood, and the Dare County Superior Court’s

conviction of Plaintiff Felix for cyberstalking in violation of N.C. Gen. Stat. § 14-196.3. In response to Plaintiffs' Informal Brief, Defendants-Appellees rely on the authorities and arguments stated in their Motions to Dismiss, Memoranda in Support thereof, and Reply Memoranda, all of which are contained in the record of the District Court proceedings. (Dist. Ct. Doc. Nos. 18–19, 29, 31, 34, 49.)¹ The Defendants-Appellees also rely on the filings submitted to the District Court and this Court in connection with Felix I. As the aforementioned filings demonstrate, the District Court properly dismissed Plaintiffs-Appellants' claims pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure for various reasons, including for lack of standing, the statute of limitations, Plaintiffs' failure to plausibly allege that the Defendants violated any of their constitutional rights, and the immunities the Defendants are entitled to under established federal and state law. (See Dist. Ct. Order and Judgment of June 8, 2021 (Dist. Ct. Docs. No. 46–47.) Plaintiffs' Motion for Reconsideration was also properly denied by the District Court on July 19, 2021 (Dist. Ct. Doc. No. 43.)

As Defendants noted to the District Court in connection with Felix I and the instant lawsuit, the Plaintiffs have stated no actionable claims whatsoever against the Defendants. See DeShaney v. Winnebago County Dep't of Soc. Serv., 489 U.S.

¹ Dist. Ct. Doc. No. 29, which provides a procedural overview of Felix I and Felix II, is attached to this brief as **Exhibit B** for the Court's convenience.

189, 195–97 (1989) (“[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors.”); accord Smith v. McCarthy, 349 F. App’x 851, 859 (4th Cir. 2009) (citing Sattler v. Johnson, 857 F.2d 224, 226–27 (4th Cir. 1988)); accord Pinder v. Johnson, 54 F.3d 1169, 1175 (4th Cir. 1995); accord Bowers v. Devito, 686 F.2d 616, 618 (7th Cir. 1982) (Posner, J.); see generally Miles v. City Council of Augusta, 710 F.2d 1542, 1544 n.5 (11th Cir. 1983).

Plaintiffs’ attempts to get a second bite of the apple at the Fourth Circuit level should be rejected, and this Court should affirm the dismissal of Plaintiffs-Appellants’ claims with prejudice. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993); see also McCabe v. Fairfax Cty. Animal Shelter, No. 19-1583, 2020 U.S. App. LEXIS 10094, at *3–4 (4th Cir. Mar. 31, 2020) (affirming 12(b)(6) dismissal of *pro se* plaintiff’s Section 1983 action); Manion v. N.C. Med. Bd., 693 F. App’x 178, 181–82 (4th Cir. 2017) (same); Clark v. Md. Dep’t of Pub. Safety & Corr. Servs., 316 F. App’x 279, 283 (4th Cir. 2009) (same).

Therefore, for the reasons and authorities cited herein, in Felix I, and in Defendants-Appellees’ filings in the District Court, the Defendants-Appellees respectfully request that the District Court’s order and judgment granting their motion to dismiss be affirmed.

Respectfully submitted this the 11th day of August, 2021.

/s/ Brian F. Castro

Brian F. Castro, NCSB No. 54312
WOMBLE BOND DICKINSON (US) LLP
555 Fayetteville Street, Suite 1100
Raleigh, NC 27601
Telephone: (336) 721-3600
Facsimile: (336) 721-3660
Email: Brian.Castro@wbd-us.com

*Attorney for Defendants-Appellees
Sheriff Doug Doughtie, Deputy
Donovan Ruth, Dare County, Dare
County Board of Commissioners and
Commissioners Woodard, Overman,
Ross, House, Tobin, Bateman, Couch,
and Dare County Attorney Robert
Outten*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is admitted to practice before the United States Court of Appeals for the Fourth Circuit, is the attorney for Defendants-Appellees and is a person of such age and discretion as to be competent to serve process.

The undersigned further certifies that, on August 11, 2021, he electronically filed the foregoing **RESPONSE TO PLAINTIFF-APPELLANT'S INFORMAL BRIEF BY DEFENDANTS-APPELLEES SHERIFF DOUG DOUGHTIE, DEPUTY DONOVAN RUTH, DARE COUNTY, DARE COUNTY BOARD OF COMMISSIONERS, COMMISSIONERS WOODARD, OVERMAN, ROSS, HOUSE, TOBIN, BATEMAN and COUCH, and DARE COUNTY ATTORNEY OUTTEN**, with the Clerk of Court using the CM/ECF system and also served a copy of the brief on the *pro se* plaintiff-appellant by placing said copy in a first-class postpaid envelope and addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Raleigh, North Carolina.

ADDRESSEE:

Daniel Felix
53828 NC Hwy 12
P.O. Box 544
Frisco, NC 27936
Pro Se Plaintiff-Appellant

/s/ Brian F. Castro

Brian F. Castro, NCSB No. 54312
WOMBLE BOND DICKINSON (US) LLP
555 Fayetteville Street, Suite 1100
Raleigh, NC 27601
Telephone: (336) 721-3600
Facsimile: (336) 721-3660
Email: Brian.Castro@wbd-us.com
Attorney for Defendants-Appellees